IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2006

CORAM:

THE HONOURABLE Mr. JUSTICE K.MOHAN RAM

C.M.A.(NPD)No.1499 of 1998

1. Lakshmi
2. A.Govindasamy
3. A.Palaniammal
4. A.Ravi
5. A.Sankar
6. Minor Eswari
7. Minor Sakthivel
8. Minor Elakkanni
9. Minor Krishnan

Minors rep by their guardian .. Appellants/petitioners

vs

The Managing Director,
Tamil Nadu State Transport Corporation,
Salem Division No.2, Dharmapuri.
(Amended the name of the respondent as per the order of the Court dated 23.09.2002 made in CMP 6361/02) ..Respondent/ Respondent

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Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and award dated 11.02.1998 passed in M.A.C.T.O.P.No.367 of 1996, on the file of the Motor Accident Claims Tribunal (Sub Court) Hosur.

For Appellants : Mr. P.Mani

For Respondent : Mr.P.Jegadeeswaran

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JUDGMENT

The claimants in M.A.C.T.O.P.No.367 of 1996 on the file of the Motor Accident Claims Tribunal (Sub Court), Hosur, are the appellants herein. Being aggrieved by the award dated 11.02.1998, awarding compensation under the head "no fault liability", alone the appeal has been filed, by the claimants/appellants.

2. The facts that are necessary for the disposal of the above appeal are set out hereunder:-

(i) As per the averments contained in the claim petition, on 03.01.1995 at about 9 a.m. the deceased Amavasai was proceeding in his cycle in Hosur to Malur Road. His son got down near the Premier Mills Quarters gate and the deceased proceeded towards his village, from south to north and moving along the mud road portion of the road. When he covered a distance of 50 feet, the driver of the bus bearing Registration No.TN.29-N.0027 belonging to the respondent, which was coming from the opposite direction, driven in a rash and negligent manner dashed against the deceased Ammavasai, who fell on the ground and sustained injuries on his head and all over the body. Initially he was taken to the Government Hospital, Hosur and as his condition became critical, as per medical advice, he was taken to Hospital at Bangalore, but on the way he died.

(ii) According to the claimants, the deceased was a contractor in chip stones (jally) and he was earning a minimum income of Rs.3,500/- per month. On his savings he has purchased lands in his native village and he was contributing to his family. As he was the sole bread winner of the family, according to the claimants due to the death of the sole bread winner, the claimants are deprived of the earning of the deceased. The claimants arrived at a compensation of Rs.9,30,200/- but restricted their claim to Rs.5,00,000/-.

3. Counter affidavit was filed by the respondent, stating that the accident had not occurred due to the rash and negligent driving of the driver of the bus. It was contended that when the bus was going infront of Premier Mill Quarters gate, the deceased coming on his cycle crossed the road, and on seeing that, the driver of the bus, to avoid the accident, turned the bus to his right towards the mud portion of the road and at that time, the cycle dashed against the bus on its right side and due to that, the deceased sustained injuries. According to the respondent, the accident occurred only due to the negligence and carelessness on the part of the deceased. The statement of the claimants

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regarding the age, income, provision etc. of the deceased was denied and it was contended that the claim of the claimants is excessive and on the higher side.

4. Before the Tribunal, the second claimant A.Govindasamy was examined as P.W.1, the F.I.R. was marked as Ex.A1 and the post mortem report was marked as Ex.A2. Ex.A3 was marked to show that the deceased was doing contract work. The sale deed was marked as Ex.A4. Exs.A5 to A8 were marked to show that the deceased was supplying blue metal. On the side of the respondent, the driver of the bus was examined as R.W.1 and Ex.B1 was marked.

5. The Tribunal without considering the oral and documentary evidence adduced in this case but only on the basis of the Criminal Court Judgment, Ex.B1, acquitting the driver of the bus, has recorded a finding that the accident had not occurred due to the rash and negligent driving of the driver of the bus, R.W.1 and accordingly rejected the claim of the claimants and awarded a compensation of Rs.50,000/- on the ground of "no fault liability". Being aggrieved by the award of the Tribunal, the above appeal has been filed by the claimants.

6. Heard Mr. P.Mani, learned counsel appearing for the appellants/claimants and Mr.P.Jagadeeswaran, learned counsel appearing for the respondent.

7. The learned counsel for the appellants submitted that the Tribunal has committed a grave error in recording a finding that the driver of the bus was not negligent in driving the bus and he was not responsible for the accident simply on the basis of Ex.B1, the Judgment of the Criminal Court whereby he was acquitted, without considering the oral and documentary evidence available on record, awarded the compensation only on the head of "No fault liability".

In support of his contention, the learned counsel for the appellants relied upon the following Judgments:-

1. 1996 ACJ 172 (Jeeva Transport Corporation Ltd., Vs. N.Subramani and others)
2. 1997 ACJ 508 (Chotu Lal and another Vs.Chamali Bai and others)
3. 2003-3-L.W.878 (The Managing Director, Thanthai Periyar Transport Corporation, Villupuram. Vs. Mani W/o.Late Subarendhar and 4 others)
4. IV (2005) ACC 334 (Dr.P.Shanmugharaj and others. Vs. Subramaniam and others)

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In 1996 ACJ 172 (stated supra), a Division Bench of this Court has observed as follows:-

> "The Judgment is not evidence in the civil court for the purpose of disbelieving a witness. The limited purpose for which the judgment in the criminal proceeding can be admitted in evidence is to prove the fact that there was a criminal proceeding and that ended in a particular manner. Apart from that, the Judgment of the Magistrate is of no use to the appellant. Hence, we dismiss the petition in C.M.P.No.17872 of 1994."

In 1997 ACJ 508 (Cited supra), a Division Bench of Rajasthan High Court has held as follows:-

> " 4. In N.K.V. Bros. (P) Ltd. Vs. M.Karumai Ammal, 1980 ACJ 435 (SC), the Hon'ble Supreme Court has held that the plea that a criminal case had ended in acquittal has no bearing in the claim case under Motor Vehicles Act, the requirement of culpable rashness under Section 304-A, Indian Penal Code, is more drastic than the negligence sufficient under law of Torts to create a liability and the Court in the accident claims cases should not succumb to niceties and technicalities and mystic maybes. Technical rules of evidence should not be applied in the accident claim cases. In Prem Kanwar Vs. Rajasthan State Road Transport Corporation (1988 ACJ 65 (Rajasthan), this Court has held that the acquittal in criminal case is of no avail because in criminal case, prosecution has to be proved beyond reasonable doubt and in the cases of compensation matter, it is the preponderance of probabilities that decides the matter.
>
> 5. It is well established legal principle that findings given in the criminal court judgment cannot be taken aid and cannot be taken advantage in the civil or compensation claim matter. Therefore, the claim petition cannot fail merely because there has been an acquittal in the criminal case. The plea that the criminal case ended in acquittal and, therefore, the compensation claim must follow suit cannot be accepted and as such rejected."

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In 2000-3-L.W. 878 (Stated Supra), a learned single Judge of this Court has held as follows:-

> "It is no doubt true that Ex.R1 would show that the said case ended in acquittal. As correctly pointed out by the Tribunal, mere acquittal in the criminal case could not be a bar to decide about the negligence on the part of the driver on the basis of the materials placed before the Tribunal."

In the case reported in IV (2005) ACC 334 (Cited Supra) another Division Bench of this Court has observed as follows:-

> "8.....Though it is stated that the criminal case filed against the driver of the bus ended in acquittal, as seen from Ex.R-7, the acquittal of the driver in a criminal case has no bearing for arriving at a conclusion by the Tribunal, since the degree of proof before the Criminal Court is different...."

8. A reading of the above said decisions, makes it clear that a plea that the criminal case had ended in acquittal has no bearing in the claim case under Motor Vehicles Act, the requirement of culpable rashness under Section 304-A, Indian Penal Code, is more drastic than the negligence sufficient under law of Torts to create a liability and the Court in the accident claims cases should not succumb to niceties and technicalities and mystic maybes. Technical rules of evidence should not be applied in the accident claim cases. The acquittal in criminal case is of no avail because in criminal case, prosecution has to prove beyond reasonable doubt and in the cases of compensation matter, it is the preponderance of probabilities that decides the matter. The Judgment of a Criminal Court is not evidence in the Civil Court for the purpose of disbelieving a witness. The mere acquittal in the Criminal case could not be a bar to decide about the negligence on the part of the driver of the bus on the basis of the materials placed before the Tribunal. Therefore, the Tribunal ought to have considered the question of negligence on the part of the driver of the bus on the basis of the oral and documentary evidence adduced before it, but the Tribunal has not done that. Therefore, this Court has to consider the question of negligence on the basis of the evidence available on record.

9. The second claimant Govindasamy was examined as P.W.1 and he has deposed that at about 9 a.m. on 03.01.1995, he and his father were going in a bicycle to Malur and when they reached near

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the Premier Mill Quarters, he got down from the cycle and at that time, the bus belonging to the respondent, which was coming from Polur to Hosur driven rashly, negligently and in a high speed by its driver dashed against the deceased who was going on the mud portion of the road and due to that his father sustained serious injuries and he has further deposed that he was standing 50 feet away when the accident occurred and immediately his father was taken in a tempo to the Hosur Hospital but on the way to the Hospital his father expired. He has also deposed that he lodged F.I.R, Ex.A1. The post mortem certificate was marked as Ex.A2. As per Ex.A2, at the time of accident, the age of the deceased was 45. P.W.1 has also deposed about the blue metal business carried on by his father and about his monthly income and his purchase of land and also his contribution to family and to prove the same, Exs.A3 to A8 were marked. In his cross examination, it was suggested to him that the accident occurred only because the deceased suddenly crossed the road. But the said suggestion has been denied by P.W.1. and nothing has been elicited in his cross examination to disbelieve his testimony. P.W.1 is corroborated by the version in FIR, Ex.A1.

10. In the counter statement filed by the respondent, it is stated that when the bus driven by its driver R.W.1 was proceeding opposite to the Premier Mill Quarters, the deceased came across the road in front of the bus and to avoid the bus hitting against him, the driver turned the bus towards the right, almost near the mud portion of the road and at that time, the cyclist-deceased dashed against the bus on its right side and due to that, the deceased sustained injuries and the accident occurred only due to the negligence on the part of the deceased, and R.W.1 was not responsible for the accident. The driver of the bus, who was examined as R.W.1 in his chief examination has stated that when the bus was nearing the bus stop located near Premier Mill, a cyclist carrying a lot of goods, came infront of the bus in a zig zag manner and on seeing him he stopped the bus and at that time, the cyclist-deceased dashed the bus on its right side and fell down and the public came to beat him and therefore he stopped the bus and rushed to Police Station and lodged a complaint. He has further deposed that the accident occurred only due to negligence on the part of the deceased and it was not due to the negligence on his part and he was acquitted in the criminal case and in proof of the same, Ex.B1, the Judgment was marked. In his cross examination, it was suggested to him that he did not lodge FIR, but he has denied the same.

11. A reading of the deposition of P.W.1 shows that he has deposed cogently, corroborating the version contained in the claim petition as well as in the FIR-Ex.A1 and nothing has been elicited from him to discard his evidence. Whereas, R.W.1, the driver of

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the bus has deposed that he lodged the FIR, which on a perusal of Ex.A1 shows to be false. In fact, the FIR, Ex.A1 has been lodged by P.W.1, the son of the deceased. R.W.1 in his deposition has not corroborated the version contained in the counter statement regarding the manner of accident. In the counter statement it is stated that when the bus driven by its driver R.W.1 was proceeding opposite to the Premier Mill Quarters, the deceased came across the road in front of the bus and to avoid hitting the bus against him, the driver turned the bus towards the right almost near the mud portion of the road and at that time, the cyclist-deceased dashed against the bus on its right side and due to that, the deceased sustained injuries. But in his deposition he has given a different version. Therefore, this Court is of the considered view that R.W.1 is not telling the truth and his evidence cannot be relied upon. It is to be pointed out that when the deceased was going on the mud portion of the road, the bus which was coming from the opposite direction, should have kept to its left side but instead it came on the right side and hit against the deceased. Therefore, it has been clearly established that the accident has occurred only due to the rash and negligent driving of the driver of the bus, R.W.1. Therefore, the finding of the Tribunal that the bus driver was not negligent in driving the bus is erroneous and the said finding of the Tribunal is set aside.

12. The quantum of compensation payable has to be decided next. P.W.1 has deposed that his father was doing blue metal business and he supplied it to various concerns and he was supporting his family. Though in support of the claim Exs. A3 to A8 were marked, it is not clear therefrom as to who issued the same and as such, not much reliance can be placed on Exs. A3 to A8. P.W.1 has also deposed that his father was earning a sum of Rs.3,500/- and was contributing a sum of Rs.3,000/- to the family. As rightly pointed out by the learned counsel for the respondent there is no acceptable evidence regarding the income derived by the deceased. Further learned counsel submits that in such cases, the Provision of the Minimum Wages Act may be applied and if the said provisions are applied the minimum wage earned by the deceased could be taken as Rs.2,250/- per month. Considering the fact that the family of the deceased consisted of nine members besides him, the deceased would have contributed a major part of the earnings to his family and as such a sum of Rs.500/- may be deducted towards his personal expenses and hence the monthly contribution to the family by the deceased comes to Rs.1,750/- per month. At the time of accident, the age of the deceased was 45 years, as mentioned in the post mortem certificate - Ex.A2. As per the second schedule of the Motor Vehicles Act, if the age of the deceased was 45 at the time of accident, then the multiplier can be taken as 15. By taking the multiplicand as Rs.21,000/- (1750x12) and applying the multiplier of 15, the pecuniary damages

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comes to Rs.3,15,000/-. The first claimant, who is the widow of the deceased is legally entitled for a sum of Rs.15,000/- towards loss of consortium. The claimants 2 to 9 who are the children of the deceased, have lost the love and affection of their father and as such they are entitled to get Rs.5,000/- each towards the loss of love and affection. Hence on that head a sum of Rs.40,000/- is payable and Rs.2,000/- is payable as funeral expenses and as per the evidence of P.W.1, his father was taken a tempo van and as such a sum of Rs.2,000/- has to be awarded towards transportation charges. Thus, the claimants are entitled for a total compensation of Rs.3,74,000/-. The Tribunal has awarded a sum of Rs.50,000/- towards 'no fault liability' and if that is adjusted the respondent has to pay a further sum of Rs.3,24,000/- to the appellants together with interest at 7.5% per month from the date of application till the date of payment.

13. The learned counsel for the respondent submitted that since the appellants have restricted their claim to Rs.2,50,000/- in the memorandum of grounds of appeal they are not entitled to get a sum of Rs.3,24,000/-, and it should be restricted to Rs.2,50,000/- only.

14. Per contra, learned counsel for the appellants relied upon the decision reported in AIR 2003 SC 674 (NAGAPPA Vs. GURUDAYAL SINGH AND OTHERS). In the said decision, the Hon'ble Supreme Court has laid down as follows:-

> "16. From the aforesaid observations it cannot be held that there is a bar for the Claims Tribunal to award the compensation in excess of what is claimed, particularly when the evidence which is brought on record is sufficient to pass such award. In cases where there is no evidence on record, the Court may permit such amendment and allow to raise additional issue and given an opportunity to the parties to produce relevant evidence."
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> .....
>
> 21. For the reasons discussed above, in our view, under the Motor Vehicles Act, there is no restriction that Tribunal/Court cannot award compensation amount exceeding the claimed amount....."

15. As per the above decision of the Supreme Court, it is for the Tribunal and this Court to award the just compensation which is in excess of what is claimed, if the evidence brought on record is sufficient and in the Act there is no restriction to award compensation exceeding the claim amount. Therefore, the

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contention of the learned counsel for the respondent is liable to be rejected and the contention of the learned counsel for the appellants has to be accepted.

16. Accordingly, there will be an award in favour of the appellants for a sum of Rs.3,74,000/- together with interest at 7.5% from the date of filing of the application till the date of payment on the condition that the appellants shall pay the requisite Court fee for the difference amount of Rs.3,24,000/- within a period of four weeks from the date of receipt of a copy of this order. The respondent is entitled to deduct a sum of Rs.50,000/- already paid by it.

17. In the result, the appeal is allowed as indicated above. No costs.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Motor Accidents Claims Tribunal,
(Subordinate Judge) Hosur.

2. The Section Officer, V R Section,
High Court Madras.

+ 1 cc to Mr. P. Mani, Advocate SR No. 42185

+ 1 cc to Mr. P. Jagadeswaran, Advocate SR No. 42328

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